

## ANALYSIS OF AMENDED BILL

Author: Sweeney Analyst: Marion Mann DeJong Bill Number: AB 1631

Related Bills: AB 1633, SB 1425, Telephone: (916) 845-6979 Amended Date: 04/15/98

SB 1478

Attorney: Doug Bramhall

Sponsor: \_\_\_\_\_

**SUBJECT:** Shift Burden Of Proof/"Taxpayer's Rights Protection Act of 1998"

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED \_\_\_\_\_ STILL APPLIES.

☒ OTHER - See comments below.

### SUMMARY OF BILL

This bill would declare legislative intent to conform to federal law relating to shifting the burden of proof in connection with taxes paid by California income tax taxpayers.

Under the Evidence Code, this bill would provide that the Board of Equalization (BOE) would have the burden of proof, applying the clear and convincing evidence standard, to sustain penalties for intent to evade or fraud. This provision does not impact the programs administered by the department.

Under the Revenue and Taxation Code (R&TC), this bill would do the following:

- Allow a taxpayer, with respect to taxes or fees administered by the BOE, to pay a specified portion of amounts in dispute and bring suit for refund. This provision does not impact the programs administered by the department.
- Provide that the BOE would have the burden of proof, applying the clear and convincing evidence standard, to sustain intent to evade or fraud penalties. This provision does not impact the programs administered by the department.

### DEPARTMENTS THAT MAY BE AFFECTED:

\_\_\_\_ STATE MANDATE

\_\_\_\_ GOVERNOR'S APPOINTMENT

#### Board Position:

\_\_\_\_ S      \_\_\_\_ O  
\_\_\_\_ SA      \_\_\_\_ OUA  
  X   N      \_\_\_\_ NP  
\_\_\_\_ NA      \_\_\_\_ NAR  
\_\_\_\_ PENDING

#### Agency Secretary Position:

\_\_\_\_ S      \_\_\_\_ O  
\_\_\_\_ SA      \_\_\_\_ OUA  
\_\_\_\_ N      \_\_\_\_ NP  
\_\_\_\_ NA      \_\_\_\_ NAR  
DEFER TO \_\_\_\_\_

#### GOVERNOR'S OFFICE USE

Position Approved \_\_\_\_\_  
Position Disapproved \_\_\_\_\_  
Position Noted \_\_\_\_\_

Department/Legislative Director      Date

Johnnie Lou Rosas      4/27/98

Agency Secretary      Date

By:      Date:

- Provide that the Franchise Tax Board (FTB) would have the burden of proof, applying the clear and convincing evidence standard, to sustain intent to evade or fraud penalties.
- Require FTB to provide taxpayers, upon their request, with itemized receipts proportionately allocating, in dollars, the taxpayer's total tax payments among specified major expenditure categories.
- Allow a taxpayer to make payment of taxes by making a deposit in the nature of a cash bond to stop the running of interest and still preserve the taxpayer's right to file a claim for refund.

Under the Unemployment Insurance Code (UIC), this bill would do the following:

- Provide that interest shall not be charged on penalties and would make related clarifying changes. (Although this provision would not impact the programs administered by the department, a discussion was provided in a prior analysis.)
- Amend the due process provisions to allow taxpayers to pay an assessment for one employee for one taxable period rather than the entire assessment to remain in the appeals process. This provision does not impact the programs administered by the department.

#### SUMMARY OF AMENDMENT

**The April 2, 1998, amendments** made the following changes.

- Added a section to the Evidence Code that would provide that the BOE would have the burden of proof, applying the clear and convincing evidence standard, to sustain intent to evade or fraud penalties.
- Deleted a provision that would have allowed taxpayers, with respect to taxes and fees administered by the BOE, to pay an unspecified percentage of amounts in dispute and bring suit for refund.
- Deleted a provision that would have amended the due process provisions of the UIC to allow taxpayers to make partial payments and remain in the appeals process.
- Made a department recommended technical change to replace "board" with "Franchise Tax Board" as appropriate.

**The April 15, 1998, amendments** made the following changes.

- Added a provision to the R&TC that would allow taxpayers, with respect to taxes and fees administered by the BOE, to pay a specified portion of amounts in dispute and bring suit for refund.
- Added a provision that would amend the due process provisions of the UIC to allow taxpayers to pay a portion of an assessment equal to one employee for one taxable period rather than the entire assessment to remain in the appeals process.

Except for the technical amendment, the April 2, 1998, amendments do not impact the provisions administered by the department. The April 15, 1998, amendments do not impact the provisions administered by the department.

The department's analysis of the bill as amended February 6, 1998, still applies for the Itemized Receipt, Payment of Cash Bonds and UIC/Interest on Penalties provisions. Except for the technical consideration, the analysis of the bill as amended March 12, 1998, still applies for the Burden of Proof provision. In addition, the Franchise Tax Board's position on this bill is changed from pending to neutral as discussed below.

#### BOARD POSITION

Neutral.

At its March 26, 1998, meeting, the Franchise Tax Board voted 2-0 to take a neutral position on this bill as amended March 12, 1998, with Robin J. Dezemmer, on behalf of Member Craig L. Brown, abstaining.